IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 753 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHIRAGBHAI SURESHBHAI JANI - Applicant(s)

Versus

SUB DIVISIONAL MAGISTRATE & 1 - Respondent(s)

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Appearance :

MR PRAVIN GONDALIYA for Applicant(s) : 1,

RULE SERVED for Respondent(s) : 1,

PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 02/09/2005

ORAL JUDGMENT

1. The petitioner has filed this application, challenging the order of externment dated 16.12.2004 passed by the respondent no.1, whereby for a period of 2 years the petitioner is externed from Padra Taluka and Padra Town in exercised of powers conferred under Section 56(a) of the Bombay Police Act, 1949.

The petitioner has also challenged the order passed in appeal by the appellate authority i.e. respondent no.2 herein dated 07.05.2005, whereby the order of externment passed by the externing authority is confirmed.

2. Both the above impugned orders dated 16.12.2004 passed by the respondent no.1 as well as dated 07.05.2005 passed in appeal by

the respondent no.2 are assailed in this petition on various grounds including not affording reasonable opportunity to raise the defense against the allegations levelled in the show-cause notice dated 12.04.2004 by the respondent no.1. That the concerned authority has relied on the statements of un-named witnesses and alleged that the externee is a head-strong person and besides this phraseology, no details or particulars about the incidents, the period and place and the date on which the petitioner externee has acted illegally is furnished or supplied to the petitioner. It is contended that when the aforesaid ground mentioned in the show cause notice are also relied upon by the externing authority while passing the order of externment dated 16.12.2004 and has formed the basis for arriving at a conclusion that the petitioner is required to be externed for the period of 2 years from Padra Taluka as well as town, it has

become imperative for the concerned authority to supply the details about the statements of such un-named witnesses. By not following the reasonable procedure, the authority has acted contrary to the provisions of natural justice and, therefore, the impugned order deprived the externee to make effective representation against the show cause notice, in absence of relevant materials, and, therefore, the same being unreasonable and arbitrary was required to quash and set aside, as submitted by the learned advocate for the petitioner alongwith the aforementioned grounds. The learned advocate for the petitioner has also submitted that the impugned order of externment suffers from vice of non-application of mind, inasmuch as, the concerned authority has while passing the order rendered the provisions of Chapter 16 of the Indian Penal Code and as mentioned that the externee is in the habit of committing crimes pertaining to the property under Chapter

16 of the Indian Penal Code. Therefore, Shri Gondaliya, learned advocate for the petitioner has submitted that Chapter 16 of the Indian Penal Code, 1860 is pertaining to the offences against human bodies while offences against the properties are referred to under Chapter 17 of the Indian Penal Code, 1970. Therefore, according to the learned advocate for the petitioner, it is evident that by referring to Chapter 16 and offences pertaining to the properties, the concerned authority has exhibited the total non-application of mind even to the legal aspects. He therefore, submitted that impugned order is also required to be quashed and set aside on the above ground also.

3. Shri Gondaliya, learned advocate for the petitioner has drawn attention to this Court to other factual aspects about non-consideration of certain statements of the witnesses relied

upon by the externing authority and aspect of non-existence of a case, which was registered against the externee way back in the year 1985 which came to be settled and therefore, he submitted that the impugned order was the result of incorrect appreciation of evidence of materials which existed before the concerned authorities. However, he submitted that so far as the first ground as urged by him for quashing and setting aside the order of externment of non compliance of the requirement of principles of natural justice and reasonable opportunity to be given to the externee, he presses into services three decisions as reported in 1990 (2) GLH 625, 1989 (2) GLR 1429 and 1991 Criminal Law Reporter and 2002 (2) GLR 1158.

Accordingly he submitted that in the present case also while referring to the statement of un-named witnesses about the

externee being head strong and short tempered, no further details or particulars have been provided by the externing authority about date, time and period or the place, such non compliance of relevant materials depriving the externee to make effective representation qua his defense and, therefore, he submitted that the above mentioned decisions are squarely applicable in the facts of the present case also. He submitted that in view of above settled position of law the order passed by the externing authority dated 16.12.2004 and confirmed by the appellate authority mechanically, in exercise of powers under Section 60(3) of the Bombay Police Act required to be quashed and set aside. His contention before the appellate authority was manifold, even though no reasons have been assigned and the grounds raised in the appeal dated 18th January 2005 against the order of externing have not been specifically dealt with though

raised in appeal memo by the appellate authority and therefore, Shri Gondaliya learned advocate for the petitioner submitted that it is illegal and contrary to the provisions of law, requires to be set right by this Hon'ble Court in exercise of powers jurisdiction under Article 226 of the Constitution of India.

4. Mrs. Hansa B. Punani, learned Assistant Government Pleader appearing for the respondent authority taken this court through the records of the case namely show cause notice dated 12th April, 2004, the order of externment dated 16.12.2004 in externment case no.13/2004 and order dated 07.05.2005 passed by the Additional Secretary, Home Department, the appellate authority in the appeal preferred by the externee and submitted that externee was given a show cause notice, which mentioned about the allegations levelled against him and a reference was already made that the statements

given by the un-named witnesses, who were not ready to depose in the public due to nefarious activities of the externee and reference about externee was sufficient for the externing authority to pass the order dated 16.12.2004.

She has further submitted that adequate opportunity of hearing was given to the externee and reply was submitted to the show cause notice by the petitioner. Not only that but the concerned advocates were also heard at length by the authorities. Therefore, she submitted that it cannot be said that there is any violation of provisions of requirements of natural justice and the order of externment is legal, just and within the ambit of Section 56 (a) of the Bombay Police Act, 1949. She has further submitted that while dealing with various grounds in the memo of appeal, the appellate authority has considered the records of the case and appropriate opportunity was

given on 31st March 2005 to the learned advocate for the petitioner and thereafter the order passed by the externing authority came to be confirmed. In such circumstances and the factual back drop she has submitted that no interference is called for by this Hon'ble Court in exercise of powers under Article 226 of the Constitution of India.

5.I have heard the learned counsel for the parties and considered the rival submissions and having perused the records of the case, I accept the submissions of learned advocate for the petitioner, for simple reason that no particulars and details or even gist of the statements of un-named witnesses as mentioned in the show cause notice and duly relied upon by the Externing authority while passing the order of detention dated 16.12.2004 have been supplied. In such circumstances, reliance placed upon by the learned advocate for the

petitioner to the authority as mentioned in Para-3 (supra) and laid down in those cases by the Division Bench and even the learned Single Judge subsequently about furnishing relevant particulars and details, area or the place about the alleged incidents against the externing is the pre-requisite conditions before passing the order of externment, providing the authority reliance on such statements. It is pertinent to refer to decision reported at 2002 (2) GLR 1158, wherein in paras 10 and 11 of the said decisions, the learned Single Judge has reproduced the relevant observations of the Bombay High Court and our High Court and came to the conclusion as under:-

In view of the aforementioned provisions of law, in the present case, reliance placed by the externing authority while passing the order of externment dated

16.12.2004 about the statements of concerned un-named private witnesses and not furnishing the details and particulars about the time, date, place etc to the externee as in fact vitiated the order of externment inasmuch as the externing was deprived of reasonable opportunity to represent his case qua the statements of those witnesses. Therefore, other grounds about reference to Chapter 16 and offences therein with regard to the property or otherwise are not required to be gone into. In a given case may or may not vitiate the order of externment depending on the facts and circumstances of each case. So far as the reliance on reference to the offences registered against the externee in the month of October, 1995 also did not require further adjudication since no material is placed on record before the externing authority or even appellate authority.

This petition succeeds on the ground of not providing reasonable opportunity of hearing to the petitioner inasmuch as the externing authority has not given reasonable opportunity by not providing details and particulars about the statements of those witnesses relied upon by the authority, and therefore, acted contrary to the settled provisions of principles of natural justice which prescribes fair and reasonable approach on the part of administrative authority while adjudicating the lis or dispute between the parties.

6. In view of the aforesaid discussion about the facts and law, it is held that the orders dated 16.12.2004 passed by the respondent no.1 in exercise of powers under Section 56(a) of the Bombay Police Act and the order dated 07.05.2005 passed by the Additional Secretary Department of Home in exercise of powers under

Section 66(3) of the Bombay Police Act, 1951 are hereby quashed and set aside.

7. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

(ANANT S. DAVE, J.)

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